

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KRISTEN ERWIN,

Plaintiff,

v.

DEFENSE HEALTH AGENCY,

Defendant.

No. 2:24-cv-2126 DJC AC PS

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in pro se and filed this case on August 7, 2024. ECF No. 1. The action was referred to the undersigned for pretrial matters by E.D. Cal. R. (“Local Rule”) 302(c)(21). Plaintiff paid the filing fee and was instructed to complete service of process within 90 days. ECF Nos. 2, 3. She did not timely complete service, and the undersigned issued an order to show cause why this case should not be dismissed for failure to prosecute. ECF No. 8. Plaintiff responded stating that she had completed service. ECF No. 9. Plaintiff’s service was improperly completed, and the court issued a second order to show cause, with additional instructions for properly completing service. ECF No. 10. In response, plaintiff filed new service documents, which were also inadequate. ECF No. 11, 12. The undersigned issued a third order to show cause on June 6, 2025, again with instructions regarding completion of service. ECF No. 13. Plaintiff did not respond.

This case was filed nearly eleven months ago, and plaintiff has not successfully served the


1 defendant despite ample instruction from the court. Accordingly, the undersigned concludes that
2 this case cannot proceed and must be dismissed for failure to prosecute.

3 In recommending this action be dismissed for failure to prosecute, the court has
4 considered “(1) the public's interest in expeditious resolution of litigation; (2) the court’s need to
5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
6 disposition of cases on their merits; and (5) the availability of less drastic alternatives.” Ferdik v.
7 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (citation omitted). Because this case cannot
8 move forward without plaintiff’s participation and the successful service of process upon
9 defendant, the court finds the factors weigh in favor of dismissal.

10 Therefore, IT IS HEREBY RECOMMENDED that this action be dismissed, without
11 prejudice, for lack of prosecution and for failure to comply with the court’s order. See Fed. R.
12 Civ. P. 41(b); Local Rule 110.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one
15 (21) days after being served with these findings and recommendations, plaintiff may file written
16 objections with the court. Such document should be captioned “Objections to Magistrate Judge’s
17 Findings and Recommendations.” Local Rule 304(d). Plaintiff is advised that failure to file
18 objections within the specified time may waive the right to appeal the District Court’s order.
19 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: June 24, 2025

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22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
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